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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-296

D. C. WILLIAMS,

Petitioner,

v.

MATTHEWS COMPANY, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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D. C. WILLIAMS,

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MATTHEWS COMPANY, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The petitioner, Mr. D. C. Williams, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered on June 20, 1974.

Opinions Below

The opinion of the Court of Appeals, which is not yet reported, is reprinted in Appendix A hereto. The opinion of the District Court, which is not reported, is set forth in Appendix B hereto.

Jurisdiction

The judgment of the Court of Appeals was entered on June 20, 1974. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Issue Presented

Whether, where a black plaintiff proves a major real estate developer has maintained a policy of racial discrimination, the district court must, in the absence of special circumstances, grant broad injunctive relief to overcome the effects of past discrimination and prevent such discrimination in the future?

Statutes Involved

Part of the Civil Rights Act of 1866, codified as 42 U.S.C. § 1981, provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Part of the Civil Rights Act of 1866, codified as 42 U.S.C. § 1982 provides:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.

Section 804 of the Civil Rights Act of 1968, 42 U.S.C. § 3604, provides in relevant part:

> [I]t shall be unlawful—
>
> (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale

or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

"Dwelling" as used in Section 804 is defined in Section 802(b), 42 U.S.C. § 3602(b), as:

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

28 U.S.C. § 1343(3) and (4) provide:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

. . . (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Section 812(c) of the Civil Rights Act of 1968, 42 U.S.C. § 3612(c), provides:

> (c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

Statement of the Case

Mr. D. C. Williams is a black resident of North Little Rock, Arkansas. North Little Rock is a suburban community adjacent to Little Rock, Arkansas. In 1970, Little Rock had a population of 132,483 of which 74.8 percent were white and 25.0 percent black. At the same time, North Little Rock had a population of 60,040 of which 83.7 percent were white and 16.1 percent black.

Mr. Williams tried unsuccessfully to purchase a vacant lot in the North Little Rock subdivision of Lakewood from its developer in order to build a larger house for his family. There are 2,000 residential lots in Lakewood and approximately one-quarter are vacant. Lakewood is a middle to upper-middle income subdivision. Lakewood had never had a black resident and was completely white in population at the time the complaint was filed in April, 1970. Lakewood, as are four other all white North Little Rock subdivisions, is being developed by the Matthews Company. The Matthews Company is the largest real estate developer in North Little Rock. The Company had an official policy of not selling any lots in its subdivisions to black purchasers from 1945 to, at least, 1965. Although the Com-

pany claimed to have reversed its exclusionary policy, no public statement or notice to that effect was given nor were affirmative steps taken to desegregate the subdivision.

In March, 1970, Mr. Williams began his efforts to purchase one of the vacant Lakewood lots marked with a "for sale" sign. Each sign gave the price and size of the lot and listed the Matthews Company as seller with its telephone number. Initially, Mr. Williams' offer to purchase a lot from the Company's chief executive officer was deferred for a week, until after the officer spoke with the absent chairman of the board of directors. However, within several days Mr. Williams was informed that it was the policy of the Company to sell only to certain unidentified approved builders, not directly to individual purchasers. There are no black approved builders. Mr. Williams then approached several white builders who had had dealings with the Matthews Company. All of the white builders refused to purchase a lot and build a house for Mr. Williams in Lakewood. Finally, Mr. Williams hired a black builder. The Company then refused to deal with the black builders until the return of the chairman of the board in several months time.

After these events, Mr. Williams filed a complaint against the Matthews Company and its principal officers on April 29, 1970 in the United States District Court for the Eastern District of Arkansas. Jurisdiction was asserted under 28 U.S.C. § 1343(3) and (4) and 42 U.S.C. § 3612 to enforce § 804 of the Civil Rights Act of 1968, 42 U.S.C. § 3604, and the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982. Mr. Williams sued individually and as class representative of other black persons similarly situated pursuant to Rule 23(b)(2), Fed. R. Civ. P. The complaint requested (1) a

declaratory judgment defining the rights and legal relations between the parties; (2) an injunction enjoining the Company and its officers from refusing to sell properties to black persons which they offer for sale to white citizens; (3) an injunction enjoining the Company and its officers from limiting Mr. Williams to purchasing a lot through an approved builder; (4) an injunction enjoining the Company and its officers from limiting its dealings to white builders; (5) an injunction enjoining the Company and its officers from enforcing any policy which continues past racial discrimination; (6) an injunction enjoining the Company and its officers from adopting any policy which causes black persons to be treated differently from white citizens; (7) an injunction enjoining the Company and its officers from selling any other lots or removing any other lots from the market until the matter was resolved; and (8) damages, attorneys fees, costs and such other relief as appears equitable, legal and just.

On September 20, 1974, after a trial on the merits, the district court dismissed both the individual and class action. The Court of Appeals, on June 20, 1974, reversed and held that:

> We think that racial discrimination by the defendants in their real estate operations is known as a matter of fact and law. The defendants' policy of selling lots only to builders, which, under the circumstances, operated to exclude black persons from acquiring building lots in the real estate subdivision, does not afford any legal justification for defendants' conduct. *Infra,* at p. A-3—A-4.

As to the class action, the Court of Appeals stated:

> Although we do find some evidence in the case which might have justified a class action, the court deter-

> mined that plaintiff has failed to show that other black persons have attempted and been denied the right to purchase property in Lakewood or other Matthews Company subdivisions. This finding afforded an appropriate basis for the dismissal of the class action, since one family is not a class and the burden is on the plaintiff to justify permitting the suit to proceed as a class action. *Infra,* at p. A-15.

The Court of Appeals then decided that Mr. Williams was entitled to a declaration of his right to purchase any Matthews Company lot, actual damages, punitive damages not to exceed $1,000, attorneys fees and costs, but failed to state that Mr. Williams was entitled to any injunctive relief. No reason was given for the denial of injunctive relief.

On August 3, 1974, the Matthews Company and its officers filed a petition for a writ of certiorari, No. 74-63, from the judgment of the Court of Appeals that the Company engaged in a racially discriminatory business policy. The instant petition does not seek review of that portion of the decision.

Reasons for Granting the Writ

The Court of Appeals' decision is the latest in a series of lower federal court decisions that frustrate effective enforcement of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601, *et seq.*, and the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982, by denying private litigants broad injunctive relief. The prior decisions in this series reason that discrimination by realtors against one black family does not justify a class action in a fair housing action, and concomitant broad injunctive relief. *Cash* v. *Swifton Land Corp.*, 434 F.2d 569, 571 (6th Cir. 1970) (class action not

maintainable where realtor conveys apartment to named plaintiff and allegation of discrimination against one black family remains); *Pegues* v. *Bakane*, 445 F.2d 1140, 1141-42 (5th Cir. 1971) (no justiciable controversy where realtor conveys home to named plaintiff in class action); *Crim* v. *Glover*, 338 F. Supp. 823, 826 (S.D. Ohio 1972) (class action not maintainable by one black family). The instant decision of the Court of Appeals for the Eighth Circuit, however, goes much further. It denied, for no stated reason, *any* injunctive relief, whether to vindicate the rights of the individual litigant, or of the class.

I.

Denial of Broad Injunctive Relief to a Black Fair Housing Plaintiff Frustrates the Effective Enforcement, of Important Civil Rights Legislation.

It is six years since Congress declared that "fair housing throughout the United States" shall be national policy, 42 U.S.C. § 3601, and created the Title VIII statutory scheme, 42 U.S.C. §§ 3601, *et seq.* It was the intent of Congress to establish "federal machinery" and "a complete arsenal of federal authority" for the enforcement of fair housing rights. *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 416-17 (1968). This intent is manifest in the statutory provision for three independent methods of obtaining compliance: *first*, initial administrative conciliation by the Department of Housing and Urban Development with subsequent option for bringing a private suit pursuant to § 810, 42 U.S.C. § 3610; *second*, private suits authorized by § 812, 42 U.S.C. § 3612, without required prior recourse to administrative proceedings; and *third*, suits brought by the Attorney Gen-

eral pursuant to § 813, 42 U.S.C. § 3613. See, *e.g.*, 114 Cong. Rec. 2765 (remarks of Congressman Celler). The Fair Housing Title has, as have numerous other civil rights statutes, thus conferred ultimate remedial authority upon the federal courts. This Court has also recognized that the Civil Rights Act of 1866, 42 U.S.C. § 1982, is enforceable by federal courts sitting in equity. *Jones* v. *Alfred H. Mayer Co., supra,* 392 U.S. at 414. In subsequent opinions this Court had directed that the remedial powers conferred upon the federal courts by the 1866 Act be liberally construed. *Sullivan* v. *Little Hunting Park, Inc.,* 396 U.S. 229 (1969); *Tillman* v. *Wheaton-Haven Recreational Assoc.,* 410 U.S. 431 (1973). Yet, fair housing is no more a reality today than in 1968. That subdivisions of the size of Lakewood remain all white is no anomaly; it is all too typical of American suburban communities.

The United States Commission on Civil Rights has recently documented that, "[D]espite a plethora of far-reaching remedial legislation, a dual housing market continues today in most metropolitan areas across the United States," *Equal Opportunity in Suburbia* 64 (July 1974).[1] Moreover, racial segregation in housing patterns is increasing[2] because racial discrimination keeps black families,

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[1] The latest census revealed that 64 percent of white Americans and 73 percent of black Americans lived in metropolitan areas, but 60 percent of white families lived in suburban areas and 79 percent of black families lived in central cities. Statement of Dr. George H. Brown, Director, Bureau of the Census, U. S. Dept. of Commerce, Hearing Before the U. S. Commission on Civil Rights, Washington, D. C. 523 (1971) [hereinafter Census Bureau Statement].

[2] From 1960 to 1970, the white population of central cities decreased by 1,920,000 while the black population increased by 2,811,000 in Standard Metropolitan Statistical Areas of 500,000 or more. During the same period and in these same Standard Metropolitan Statistical Areas, the white suburban population

even when they are able to afford such housing, out of the suburbs.[3] The discrimination suffered by Mr. Williams in attempting to purchase a lot in the Lakewood subdivision of suburban North Little Rock is thus a problem of national dimensions. That Mr. Williams seeks to move his family from a predominately black subdivision to all-white Lakewood suggests that racial segregation can exist within suburban areas as well as between suburban communities and central cities.

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increased by 12,468,000, while black population increased by 762,000. Census Bureau Statement at 531. In 1970, the black central city population was 24 percent in these areas while the white suburban population stood at 94.3. On the basis of such statistics and extensive testimony in hearings throughout the nation, the Commission was compelled to characterize American metropolitan areas as typically a "white suburban noose" surrounding a deprived and decaying, increasingly black, central city. *Equal Opportunity in Suburbia*, 1, 64-68.

In 1970, four cities were more than 50 percent black—Atlanta, Newark, Gary and Washington, D. C.—and seven others already more than 40 percent black—Detroit, St. Louis, Baltimore, New Orleans, Wilmington, Birmingham and Richmond. Census Bureau Statement at 526. Demographic projections indicate that by the year 2,000, American metropolitan areas will have central city populations 75 percent black and 25 percent white. Census Bureau Statement at 531.

[3] Black Americans are concentrated in central cities regardless of income level: 85.5 percent of black families in metropolitan areas of a million or more with income less than $4,000 live in central cities compared with 46.4 percent of white families with the same income; 82.5 percent of black families with incomes between $4,000 and $10,000 live in central cities as do 41.6 percent of white families with the same income; 76.8 percent of black families with incomes of $10,000 or more live in central cities compared with 30.9 percent of their white counterparts. Even if black families were to have incomes equivalent to white families, i.e., if actual income disparity were made up, the percentage of black central city residents of metropolitan areas of a million or more would only drop from 81.1 to 78.4 percent. It is thus clear that racial discrimination in the sale and rental of housing, rather than that other often-cited factor, income disparity, is principally responsible for the magnitude of racial separation in housing. Census Bureau Statement.

The Civil Rights Commission sought to find the causes of continued racial discrimination in housing as well as document effect and extent. To that end, the Commission cited the specific failure of the Justice Department and the Department of Housing and Urban Development to fulfill their Title VIII enforcement duties:

> Neither HUD nor the Department of Justice has enforced existing antidiscrimination laws vigorously or effectively. The housing section of the Justice Department's Civil Rights Division, which is responsible for enforcement of the Title VIII antidiscrimination provisions, has only 25 lawyers to handle what is supposed to be a nationwide effort. In 1971, HUD promulgated "affirmative marketing guidelines," requiring developers of new FHA subdivisions and multi-family projects to adopt affirmative programs, including the hiring of minority sales and rental agents, to assure the marketing of housing to all races. But the regulations established no mechanism to guarantee that such plans will actually be carried out.
>
> Unless the Federal Government undertakes a determined effort to enforce Federal anti-discrimination laws, city-suburban polarization will continue and the cycle of urban poverty will perpetuate itself uninterrupted and unabated. While the time has long passed for assessing blame, it cannot be denied that Federal agencies share with local authorities, the housing industry, and its related professions a moral and legal responsibility for having created a problem which will never solve itself. The task now is to employ the tools suggested, and to make better use of tools at hand, to break the suburban "noose" and put an end to America's increasing racial polarization. *Equal Opportunity in Suburbia* 66.

See, generally, *supra*, 40-42. The failure of two of the three compliance methods Congress created to enforce Title VIII throws a greater burden of enforcement upon private litigants. Private litigants, like Mr. Williams, of course lack even the enforcement resources presently possessed by the Justice Department and HUD. Restricting the relief private litigants may obtain after they have prevailed upon the merits threatens to remove even this last weapon from the Title VIII arsenal.

What is at stake is the practical enforcement of Title VIII. In finding that the Matthews Company had engaged in a racially discriminatory business policy the Court of Appeals necessarily laid the basis for requiring certain injunctive relief, standard in civil rights litigation, to safeguard fair housing rights.[4] Without such broad relief, the Matthews Company is free to subject other black persons to the same discriminatory policy in continued violation of

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[4] Such standard forms of injunctive relief, which we respectfully submit are appropriate in this case, are as follows: First, the Company should be enjoined from failing or refusing to sell lots to any person, including individual purchasers, builders or their agents, because of race or color. Second, the Company should be enjoined from discriminating in the terms, conditions or privileges of ownership against any person because of race or color. Third, the Company should be enjoined from dealing with any builders, contractors, agents or other such person who discriminates on the basis of race or color. Fourth, the Company should be affirmatively required to instruct its employees, builders, contractors, agents or other such persons that the Company will not enter into any business relation with any person who discriminates on the basis of race or color. Fifth, the Company should be affirmatively required to include in all advertisements, brochures, pamphlets or signs a statement that sales are made without regard to race or color. Sixth, the Company should be affirmatively required to conspicuously post at its place of business a written sign or notice that sales are made without regard to race or color. Seventh, the Company should be affirmatively required to make periodic reports to the district court of its business practices and sales for such a term as the district court may require or until sales of vacant lots and other properties are completed.

Title VIII.[5] The complaint prayed for injunctive relief of this character and there is no clear proof that it is unnecessary, see *United States* v. *Oregon State Medical Soc.*, 343 U.S. 326, 333-35 (1951). The Company has not voluntarily and irrevocably ended its discriminatory policy, nor is the Williams family the only black family in the area that could possibly be interested in living in Lakewood.

In Justice Department fair housing suits authorized by § 813, broad injunctive relief is standard. See, *e.g.*, the decrees required in *United States* v. *West Peachtree Tenth Corp.*, 437 F.2d 221, 229-31 (5th Cir. 1971), and *United States* v. *Reddoch*, 1 Prentice-Hall Equal Opportunity In Housing Rptr. ¶ 13,569 (S.D. Ala. 1972), *aff'd*, 467 F.2d 897 (5th Cir. 1972). Compare the decrees entered in *United States* v. *Ramsey*, 331 F.2d 824, 829-30 (5th Cir. 1964) (voting rights case); *United States* v. *Jefferson County Board of Education*, 372 F.2d 836, 896-902 (5th Cir. 1966) (school desegregation case); *United States* v. *United States Steel Corp.*, 5 E.P.D. ¶ 8619 (N.D. Ala. 1973) (employment discrimination case); *United States* v. *Georgia Power Company*, 7 E.P.D. ¶ 9167 (N.D. Ga. 1974) (employment discrimination case). Moreover, the federal courts have con-

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[5] The Company would merely be enjoined from engaging in acts prohibited by § 804, 42 U.S.C. § 3604 by a decree. As to affirmative requirements: The requirement that the Company instruct its employees, builders, contractors, agents and such other persons that the Company will not tolerate discrimination arises from the Court of Appeals' own observation that, "It stretches credulity to believe that the Matthews Company and its officers did not know that white builders would refuse to buy a lot and build a home for a black person in the Lakewood subdivision," *infra* at p. A-13, n. 10. HUD regulations require the Company and other participants in real estate transactions to publicly state that sales are made without regard to race or color. 24 C.F.R. § 1, 12 C.F.R. § 528.4 and .5; 12 C.F.R. § 613.3160 and .3170; 12 C.F.R. § 701.31. HUD regulations also require record-keeping. 12 C.F.R. § 528.6; 24 C.F.R. § 1.6.

strued possibly limiting statutory language concerning a "pattern or practice of resistance" or an "issue of general public importance" in § 813 as not requiring the Justice Department to demonstrate that the discrimination it seeks to redress affects many persons before obtaining broad injunctive relief. *United States* v. *West Peachtree Tenth Corp., supra,* 437 F.2d at 227; *United States* v. *Reddoch, supra,* 1 P.H.E.O.H. Rptr. ¶ 13,569 at p. 13,777-78. In light of the Civil Rights Commission findings about federal enforcement, broad injunctive relief in private suits is all the more important.

The class action predicate for broadly applicable injunctive relief was also established by the holding of the Court of Appeals that the Matthews Company had engaged in a policy of racial discrimination. By its very nature, racial discrimination affects all the members of a disfavored race. Mr. Williams was obviously not the only black person affected by the exclusionary sales policy. Lakewood, North Little Rock's largest subdivision, has never had a black resident. The Company not only refused to sell to Mr. Williams, but to his black builder as well. In deposition, Mr. Williams stated that he personally knew of at least two other black purchasers who were refused lots in Lakewood. Appendix on Appeal at 315-316. It is one thing to use a series of similar discriminatory acts to establish that racial discrimination occurred, *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792, 804-05 (1973), but quite another to require a showing that demonstrated racial discrimination affects many other black persons before broad injunctive relief can issue. Nevertheless, the Court of Appeals did just that. The similar decisions of the Sixth Circuit in

Cash v. *Swifton Land Corp., supra,* 434 F.2d at 571, and the Fifth Circuit in *Pegues* v. *Bakane, supra,* 445 F.2d at 1140-42, indicate that the Eighth Circuit decision is no isolated phenomenon.

II.

Denial of Broad Injunctive Relief Is Not in Accord With Applicable Decisions of This Court in Fair Housing and Civil Rights Cases Generally.

The denial, out of hand, of injunctive relief is inconsistent with the requirements of Title VIII, as construed by this Court. This Court has characterized Title VIII as a "comprehensive open housing law" and "a detailed housing law, applicable to a broad range of discriminatory practices," *Jones* v. *Alfred H. Mayer Co., supra,* 392 U.S. at 413, 417 (1968). In *Trafficante* v. *Metropolitan Life Ins. Co.,* 409 U.S. 205, 211 (1972), the Court reviewed the legislative history indicating that Congress believed "the whole community" was the victim of discriminatory housing policies, 114 Cong. Rec. 2706 (remarks of Senator Javits) and that the reach of the law was to replace ghettos with "truly integrated and balanced living pattern," 114 Cong. Rec. 3422 (remarks of Senator Mondale). Federal courts are mandated "'to adjust their remedies so as to grant the necessary relief' where federally secured rights are invaded," *J. I. Case Co.* v. *Borak,* 377 U.S. 426, 433 (1964). Moreover, the special function private civil rights litigants serve as "private attorneys general" who have assumed the mantle of the sovereign to enforce national policy is clear in fair housing actions. *Newman* v. *Piggie Park Enterprises,* 390 U.S. 400, 402 (1968); *Trafficante* v. *Metropolitan Life Ins. Co., supra,* 409 U.S. at 211. If private attorneys general, such as Mr. Williams, are not entitled to broad in-

junctive relief, the right of the community in an integrated living environment may never be vindicated. This Congress did not intend.[6] In *Trafficante,* a white tenant had standing to sue the owner of an apartment building for violating Title VIII; no less is a black plaintiff entitled to broad injunctive relief that guarantees an integrated living environment.

The denial of injunctive relief is also not in accord with applicable decisions of this Court that define the purpose of judicial equity power in civil rights cases generally. In *United States* v. *Louisiana,* 380 U.S. 145, 154 (1965), this Court declared that "the court has not only the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." See also, *Goosby* v. *Osser,* 409 U.S. 512, 517, n. 5 (1972). The refusal of the Court of Appeals to prescribe injunctive safeguards for the desegregation of the Lakewood subdivision by the first black family to move in is inconsistent with the remedial principle of the school desegregation cases beginning with

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[6] Indeed, Congress set forth the guiding presumption that injunctive relief is ordinarily available in fair housing cases. Section 812(c) of Title VIII expressly states that a court may grant as relief any appropriate "permanent or temporary injunction, temporary restraining order, or other order." § 813 authorizing Justice Department suits contains identical remedial language. This Court has stated that, "[t]he fact that 42 U.S.C. § 1982 is couched in declaratory terms and provides no explicit method of enforcement does not, of course, prevent a federal court from fashioning an effective equitable remedy [citations omitted]," *Jones* v. *Alfred H. Mayer Co., supra,* 392 U.S. at 413, n. 13. The jurisdictional statute, 28 U.S.C. § 1343(4) confers jurisdiction upon the district courts in any civil rights action authorized by law "to secure equitable or other relief under any Act of Congress providing for the protection of civil rights." The equity imperative that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled" has of course been codified in Rule 54(c), Fed. R. Civ. P.

Brown v. *Board of Education*, 349 U.S. 294 (1955). *E.g.*, *Griffin* v. *City School Board*, 377 U.S. 218 (1968); *Green* v. *City School Board*, 391 U.S. 430 (1968); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1970); *Keyes* v. *School District No. 1*, 413 U.S. 189 (1973). This line of cases is perhaps the classic instance in which this Court has synthesized the constitutional imperative to vindicate civil rights and traditional notions of equity breadth and flexibility. "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann* v. *Charlotte-Mecklenburg Board of Education, supra*, 402 U.S. at 15.

Today, it is in a fair housing action that the breadth and flexibility of injunctive relief is at issue. As a matter of history, the necessity for injunctive relief has been a recurring threshold problem in area after area of civil rights litigation. However, in no other civil rights area but fair housing law have the courts decided the question adversely to civil rights advocates. In *Clemons* v. *Board of Education of Hillsboro*, 228 F.2d 853 (6th Cir. 1956), *cert. denied*, 350 U.S. 1006 (1956), the Court observed that "extensive research has revealed no case in which it is declared that a judge has judicial discretion by denial of an injunction to continue the deprivation of basic human rights." Justice Stewart, then a Circuit Judge, concurred, adding that in such cases "the area permissible under the law for the exercise of judicial discretion was an extremely narrow one." In *Potts* v. *Flax*, 313 F.2d 284, 288-90 (5th Cir. 1963), and *Buckner* v. *County School Board*, 332 F.2d 452, 454-56 (4th Cir. 1964) (en banc), the courts decided that named plaintiffs may obtain system-wide desegregation as well as individual relief. *United States* v. *Louisiana*, 380 U.S. 145 (1965) and *United States* v. *Atkins*, 323 F.2d 733, 738-40

(5th Cir. 1963), stand for the same rule in voting rights. Compare, *Bailey* v. *Patterson*, 323 F.2d 201, 205-207 (5th Cir. 1963) (segregation in common carriers), and *Cypress* v. *Newport News General and Nonsectarian Hosp. Ass'n*, 375 F.2d 648 (4th Cir. 1967) (segregation in health services).

In recent years it is in racial discrimination litigation authorized by the Civil Rights Act of 1964, as amended, and 42 U.S.C. § 1981 that federal courts have been called upon with great frequency to decide that a private litigant "[i]f he obtains an injunction . . . does so not for himself alone, but also as a 'private attorney general,' vindicating a policy that Congress considered as the highest priority," *Newman* v. *Piggie Park Enterprises, supra*, 390 U.S. at 401-02. "Whether in name or not, the suit is *per se* a sort of class action for fellow employees similarly situated," *Jenkins* v. *United Gas Corp.*, 400 F.2d 28, 33 (5th Cir. 1968), and "[d]iscrimination on the basis of race . . . is *class discrimination*," *Georgia Power Co.* v. *E.E.O.C.*, 412 F.2d 462, 468 (5th Cir. 1969) (original emphasis). "The trial judge in a Title VII case bears a special responsibility in the public interest to resolve the employment dispute, for once the judicial machinery has been set in train, the proceeding takes on a public character in which remedies are devised to vindicate the policies of the Act, not merely to afford private relief to the employee." *Hutchins* v. *United States Industries, Inc.*, 428 F.2d 303, 311 (5th Cir. 1970). See also, *Parham* v. *Southwestern Bell Telephone Co.*, 433 F.2d 421 (8th Cir. 1970); *Sprogis* v. *United Air Lines, Inc.*, 444 F.2d 1194 (7th Cir. 1971).

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the judgment and opinion of the Eighth Circuit.

Respectfully submitted,

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